

FIRST REGULAR SESSION

SENATE BILL NO. 547

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHMITT.

Read 1st time February 26, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2242S.011

AN ACT

To repeal sections 376.428 and 376.453, RSMo, and to enact in lieu thereof six new sections relating to health insurance.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 376.428 and 376.453, RSMo, are repealed and six new
2 sections enacted in lieu thereof, to be known as sections 376.428, 376.437,
3 376.439, 376.443, 376.453, and 376.1600, to read as follows:

376.428. 1. A group policy delivered or issued for delivery in this state
2 on or after [one hundred twenty days following September 28, 1985, by an
3 insurance company, health service corporation or health maintenance
4 organization] **January 1, 2010, by a health carrier, as defined in section**
5 **376.1350**, which insures employees or members and their eligible dependents for
6 hospital, surgical or major medical insurance on an expense-incurred or service
7 basis, other than for specific diseases or for accidental injuries only, shall provide
8 that employees or members whose coverage under the group policy, which
9 includes coverage for their eligible dependents, would otherwise terminate
10 because of termination of employment or membership shall be entitled to continue
11 their hospital, surgical or major medical coverage, including coverage for their
12 eligible dependents, under that group policy [subject to the following terms and
13 conditions:

14 (1) Continuation shall only be available to an employee or member who
15 has been continuously insured under the group policy, and for similar benefits
16 under any group policy which it replaced, during the entire three-month period
17 ending with such termination. If employment is reinstated during the
18 continuation period, then coverage under the group policy will be reinstated for

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 the employee and any dependents who were covered under continuation;

20 (2) Continuation shall not be available for any person covered under the
21 group policy who is or could be covered by Medicare, nor any person who is or
22 could be covered by any other insured or uninsured arrangement which provides
23 hospital, surgical or major medical coverage for individuals in a group and under
24 which the person was not covered immediately prior to such termination;

25 (3) Continuation need not include dental, vision care or prescription drug
26 benefits or any other benefits provided under the group policy in addition to its
27 hospital, surgical or major medical benefits, but continuation must include
28 maternity benefits if those benefits are provided under the group policy;

29 (4) The employee or member must request such continuation in writing
30 within thirty-one days of the date coverage would otherwise terminate and must
31 pay to the group policyholder, on a monthly basis, the amount of contribution
32 required to continue the coverage. Such premium contribution shall not be more
33 than the group rate of the insurance being continued on the due date of each
34 payment; but, if any benefits are omitted as provided by subdivision (3) of this
35 subsection, such premium contribution shall be reduced accordingly. The
36 employee's or member's written request for continuation, together with the first
37 required premium contribution, must be given to the group policyholder within
38 thirty-one days of the date the coverage would otherwise terminate. Employers
39 must notify their employees and members, in writing, of the duties of such
40 employees and members under this subdivision no later than the date on which
41 coverage would otherwise terminate;

42 (5) Continuation of coverage under the group policy for any covered person
43 shall terminate upon failure to satisfy subdivision (2) of this subsection or, if
44 earlier, at the first to occur of the following:

45 (a) The date nine months after the date the employee's or member's
46 coverage under the group would have terminated because of termination of
47 employment or membership;

48 (b) If the employee or member fails to make timely payment of a required
49 premium contribution, the end of the period for which contributions were made;

50 (c) The date on which the group policy is terminated or, in the case of an
51 employee, the date the employer terminates participation under a group
52 policy. However, if this condition applies and the coverage ceasing by reason of
53 termination is replaced by similar coverage under another group policy, then:

54 a. The employee or member shall have the right to become covered under

55 that other group policy for the balance of the period that he would have remained
56 covered under the prior group policy in accordance with the conditions of this
57 section;

58 b. The minimum level of benefits to be provided by the other group policy
59 shall be the applicable level of benefits of the prior group policy reduced by any
60 benefits payable under that prior policy; and

61 c. The prior group policy shall continue to provide benefits to the extent
62 of its accrued liabilities and extensions of benefits as if the replacement had not
63 occurred] **in the same manner as continuation of coverage is required**
64 **under the continuation of coverage provisions set forth in the federal**
65 **Consolidated Omnibus Budget Reconciliation Act (COBRA), as amended.**

66 2. The spouse of an employee or member whose coverage under the group
67 policy would otherwise terminate due to dissolution of marriage or death of the
68 employee or member shall have the same continuation privilege accorded under
69 sections 376.421 to 376.442, 376.694 to 376.696, and 376.779 to the employee or
70 member upon termination of employment or membership.

71 3. The right to a converted policy pursuant to sections 376.395 to 376.404
72 for an employee or member entitled to continuation of coverage under sections
73 376.421 to 376.442, 376.694 to 376.696, and 376.779 shall commence upon
74 termination of the continued coverage provided for in sections 376.421 to 376.442,
75 376.694 to 376.696, and 376.779.

76 4. This section shall only apply to those persons who are not subject to the
77 continuation and conversion provisions set forth in Title I, Subtitle B, Part 6 of
78 the Employment Retirement Income Security Act of 1974 or Title XXII of the
79 Public Health Service Act, as said acts were in effect on January 1, 1987.

376.437. 1. Any group policy, contract, or health benefit plan
2 **which is issued, delivered, issued for delivery, or renewed in this state**
3 **on or after January 1, 2010, providing coverage for hospital or medical**
4 **expenses other than for specific diseases or for accidental injuries only,**
5 **shall contain a provision that a group member or employee whose**
6 **insurance coverage under the policy or health benefit plan otherwise**
7 **terminates after the expiration of the period of continuation of**
8 **coverage for which the individual is eligible under the federal**
9 **Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), or**
10 **section 376.428 shall be entitled to continue coverage under that group**
11 **policy or health benefit plan for himself or herself and his or her**

12 eligible dependents if the member or employee was fifty-five years of
13 age or older at the time of the expiration of coverage provided by the
14 federal Consolidated Omnibus Budget Reconciliation Act or section
15 376.428.

16 2. In the event and to the extent that this section is applicable,
17 the election by the group member or employee to obtain continuation
18 of coverage as provided under the federal Consolidated Omnibus
19 Budget Reconciliation Act of 1985 (COBRA) or under the provisions of
20 section 376.428 shall constitute election of continuation of coverage
21 under this section without further action by the group member or
22 employee. The provisions of the federal Consolidated Omnibus Budget
23 Reconciliation Act of 1985 (COBRA) or of section 376.428, whichever is
24 applicable, regarding notice to a group member or an employee of the
25 right to continue coverage shall apply to the continuation of coverage
26 provided under this section.

27 3. If an eligible group member or employee elects continuation
28 of coverage under the provisions of this section, the monthly premium
29 contribution for the continuation coverage shall not be greater than
30 one hundred two percent of the total of the amount that would be
31 charged if the eligible group member or employee were a current group
32 member or employee of the group contract, policy, or health benefit
33 plan plus an amount that the group policyholder would contribute
34 toward the premium if the eligible group member or employee were a
35 current group member or employee.

36 4. The first premium for the continuation of coverage under this
37 section shall be paid by the eligible group member or employee on the
38 first regular due date following the expiration of the eligible person's
39 benefits under the federal Consolidated Omnibus Budget Reconciliation
40 Act of 1985 (COBRA) or under the provisions of section 376.428.

41 5. Failure of the employee or member to exercise the election in
42 accordance with subsection 2 of this section shall terminate the right
43 to continuation of benefits under subsection 1 of this section.

44 6. The right to extended continuation coverage under the
45 provisions of this section shall terminate upon the earliest of any of the
46 following:

47 (1) The failure to pay premiums or required premium
48 contributions, if applicable, when due, including any grace period

49 allowed by the policy;

50 (2) The date that the group policy or plan is terminated as to all
51 group members or employees except that if a different group policy or
52 plan is made available to group members, the eligible group member or
53 employee shall be eligible for continuation of coverage as if the original
54 policy had not been terminated;

55 (3) The date on which the eligible member or employee becomes
56 insured under any other group health policy;

57 (4) The date on which the eligible member or employee becomes
58 eligible for coverage under the federal Medicare Program pursuant to
59 Title XVIII of the federal Social Security Act;

60 (5) The date on which the member or employee attains his or her
61 sixty-fifth birthday.

62 7. As used in this section, the term "policy, contract, or plan"
63 shall mean a group insurance policy or health benefit plan providing
64 group health insurance coverage on an expense incurred basis, or a
65 group service or indemnity contract issued by a health carrier as
66 defined in section 376.1350.

67 8. The director shall promulgate such rules and regulations as
68 may be necessary to implement the provisions of this section. Any rule
69 or portion of a rule, as that term is defined in section 536.010, RSMo,
70 that is created under the authority delegated in this section shall
71 become effective only if it complies with and is subject to all of the
72 provisions of chapter 536, RSMo, and, if applicable, section 536.028,
73 RSMo. This section and chapter 536, RSMo, are nonseverable and if any
74 of the powers vested with the general assembly pursuant to chapter
75 536, RSMo, to review, to delay the effective date, or to disapprove and
76 annul a rule are subsequently held unconstitutional, then the grant of
77 rulemaking authority and any rule proposed or adopted after August
78 28, 2009, shall be invalid and void.

376.439. All group policies delivered, issued for delivery, or
2 renewed in this state on or after January 1, 2010, that provide
3 continuation coverage to individuals and their eligible dependents
4 pursuant to section 376.428, shall have their continuation of coverage
5 experience pooled across all fully insured group business in
6 Missouri. The rating system or methodology in which the premium for
7 all persons covered under a continuation of coverage provision shall be

8 based on the experience of all persons covered by a continuation of
9 coverage provision with any cost of the pool experience spread over all
10 fully insured premiums in Missouri on an equal percentage basis. The
11 health benefit plan under which continuation coverage is provided
12 under section 376.428 shall not have the plan's premium directly
13 affected by those within the group plan who are exercising their
14 continuation rights under section 376.428.

376.443. In addition to the group policy under which an employee
2 or group member may continue coverage under the federal
3 Consolidated Omnibus Budget Reconciliation Act (COBRA) or section
4 376.428, the health carrier shall offer the employee, group member, or
5 any qualifying eligible individual the option of continuation of
6 coverage through a high deductible health plan, or its actuarial
7 equivalent, that is eligible for use with a health savings account under
8 the applicable provisions of Section 223 of the Internal Revenue
9 Code. Such high deductible health plan shall have health insurance
10 premiums that are consistent with the underlying group plan of
11 coverage rated relative to the standard or manual rates for the benefits
12 provided. As used in this section, a "high deductible health plan" shall
13 mean a health savings account eligible plan that meets the criteria
14 established in 26 U.S.C. Section 223(c)(2), as amended, and any
15 regulations promulgated thereunder.

376.453. 1. An employer that provides health insurance coverage for
2 which any portion of the premium is payable by the [employer] **employee** shall
3 not provide such coverage unless the employer has established a premium-only
4 cafeteria plan as permitted under federal law, 26 U.S.C. Section 125 or a **health**
5 **reimbursement arrangement as permitted under federal law, 26 U.S.C.**
6 **Section 105**. The provisions of this subsection shall not apply to employers who
7 offer health insurance through any self-insured or self-funded group health
8 benefit plan of any type or description.

2. Nothing in this section shall prohibit or otherwise restrict an
10 employer's ability to either provide a group health benefit plan or create a
11 premium-only cafeteria plan with defined contributions and in which the
12 employee purchases the policy.

376.1600. 1. The director of the department of insurance,
2 financial institutions and professional registration is authorized to
3 allow employees to use funds from one or more employer health

4 reimbursement arrangement only plans to help pay for coverage in the
5 individual health insurance market. This will encourage employer
6 financial support of health insurance or health-related expenses
7 recognized under the rules of the federal Internal Revenue
8 Service. Health reimbursement arrangement only plans shall not be
9 considered insurance under this chapter.

10 2. As used in this section, the term "health reimbursement
11 arrangement" shall mean an employee benefit plan provided by an
12 employer which:

13 (1) Establishes an account or trust which is funded solely by the
14 employer and not through a salary reduction or otherwise under a
15 cafeteria plan established pursuant to Section 125 of the Internal
16 Revenue Code of 1986;

17 (2) Reimburses the employee for qualified medical care expenses,
18 as defined by 26 U.S.C. Section 213(d), incurred by the employee and
19 the employee's spouse and dependents; and

20 (3) Carries forward any unused portion of the maximum dollar
21 amount at the end of the coverage period to increase the maximum
22 reimbursement amount in subsequent coverage periods.

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